

VIA Document I  
**ORIGINAL**

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FILED  
2008 JUL -8 AM 10:26

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

-58-

BY  DEPOT

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5 || Attorney for Plaintiff

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

10 | SYLVIA M. ORTIZ,

) Case No.

11 Plaintiff

) COMPLAINT FOR DAMAGES;  
)) DEMAND FOR A JURY TRIAL

12 | v.

13 SODEXO, INC., a Delaware Corporation,

14

Defendant.

14

1

## FIRST CLAIM

**(Violation of statutory duties under California Government Code §12940 et seq.)**

19       1. Plaintiff SYLVIA M. ORTIZ, is a citizen of the United States and California  
20 and a resident of San Diego, County, CA . She is a female.

21        2. Defendant SODEXO, INC. (aka "SODEXHO, INC."), is a corporation organized and  
22 existing under the laws of Delaware with its principal place of business in Maryland.

23       3. This court has diversity jurisdiction over this matter pursuant to 28 U.S.C. §1332 in that  
24 the citizenship the Plaintiff is different from the citizenship of the Defendant and Plaintiff  
25 claims damages in excess of \$75,001. Venue is proper in this district because the events which form  
26 the basis of the claim occurred in San Diego County, CA.

27       4. In August 2007 Plaintiff was a permanent non-managerial employee of the Defendant  
28 SODEXO, INC. and had been working for the Defendant in San Diego, County, CA

1 at Sharp Hospital since May 2006. In December 2007 Plaintiff notified her employer in writing  
2 that she was cohabiting with a male employee of the Defendant. It was known by the Defendant  
3 that Plaintiff was romantically involved with this male employee. The male employee also  
4 notified the Defendant in writing that he was cohabiting with Plaintiff. This joint living  
5 arrangement was approved by Mr. Franco, the person who was then the manager of department  
6 in which Plaintiff and the male employee both worked. At all times herein mentioned Mr. Franco  
7 was a managing agent of Defendant SODEXO, INC. and his conduct alleged herein was  
8 authorized and ratified by Defendant SODEXO, INC. After Mr. Franco learned that Plaintiff  
9 was living with a male co-employee he began treating Plaintiff coldly and adversely and unlike the  
10 way he treated her before he gained that knowledge. This included Mr. Franco withdrawing  
11 a verbal promise he made to Plaintiff to work to get her hourly rate raised to \$17 an hour. Mr.  
12 Franco's treatment of Plaintiff was unlike his treatment of other females working under his  
13 supervision who were not living with male co-employees. Mr. Franco did not approve of Plaintiff  
14 living with the male co-employee because of his religious views which were different from  
15 those of the Plaintiff and because of Plaintiff's sex. In or about August 2007, Mr. Franco got  
16 a new, higher job with the Defendant but before he left he directed his successor, Mr. Weber, to  
17 terminate Plaintiff's employment. Mr. Franco's decision to direct Mr. Weber to  
18 terminate Plaintiff's employment was motivated by the fact that because of his religious beliefs,  
19 and her sex. Mr. Weber, with the approval of Mr. Franco, who was at the time Mr. Weber's  
20 supervisor, carried out the direction to terminate Plaintiff's employment in August 2007.  
21 Mr. Weber was at all times herein mentioned a managing agent of the Defendant and the Defendant  
22 authorized and ratified his conduct. In terminating Plaintiff's employment and in using  
23 Plaintiff's sex and differing religious beliefs as factors in making the decision to terminate  
24 Plaintiff's employment the Defendant discriminated against Plaintiff in violation of California  
25 Government Code §12940 et seq.

26       5. When he terminated Plaintiff's employment in August 2007, Mr. Weber, in  
27 conjunction with other managerial employees of the Defendant including Mr. Franco, falsely  
28 informed Plaintiff that she had a conflict of interest because she was living with a co-employee and

1 that this conflict of interest was in violation of Defendant's alleged policy of not employing  
2 relatives in the same department. The true facts were that before terminating Plaintiff's employment,  
3 Plaintiff's work was fully investigated by the Defendant and it was determined she was doing her  
4 job properly and had no conflict interest. The true facts were that Plaintiff was not "related"  
5 to the male co-employee with whom she lived as the term "related" was defined in Defendant's  
6 policies in effect at the time. Mr. Weber presented Plaintiff with a false ultimatum that she  
7 would have to quit her job or be fired or that her then boyfriend would have to quit. The truth was  
8 in August 2007 and before August 2007 Defendant allowed actually "related" employees,  
9 as that term was defined in Defendant's policies, to work in the same department and that  
10 the alleged policy and the alleged conflict of interest were used as pretexts to get rid of  
11 Plaintiff as Mr. Franco had directed before he left his position as general manager. In engaging  
12 in this conduct the Defendant intended to cause Plaintiff harm and to oppress Plaintiff  
13 and did oppress Plaintiff and harm her. The conduct of Mr. Weber and Mr. Franco and the other  
14 employees of the Defendant alleged herein was authorized and ratified by the Defendant and  
15 they were acting within the scope of their employment when they engaged in that conduct.

16       6. Plaintiff filed a complaint with the California Department of Fair Employment  
17 concerning the sex and religious discrimination she suffered as a result of the Defendant's  
18 conduct and on May 14, 2008 received a Notice of Case Closure ("Right to Sue") notice which  
19 has been served on the Defendant.

20       7. The conduct of the Defendant alleged herein has legally caused Plaintiff to  
21 lose past wages and will legally cause her to lose wages in the future in an amount to be proved  
22 and which are in total in excess of \$75,001.

23       8. The conduct of the Defendant alleged further legally caused Plaintiff to suffer  
24 severe mental and emotional distress including depression, anxiety, frustration and  
25 humiliation all to her damage in an amount to be proved and which is in excess of \$75,001.  
26 Plaintiff is informed and believes and thereon alleges, the conduct of the Defendant  
27 alleged herein will cause her to suffer severe emotional distress in the future all to her damage  
28 in an amount to be proved.

1       9. Plaintiff has incurred and will continue to incur in the future attorney's fees  
2 and expenses in connection with pursuing her discrimination claims which she claims  
3 pursuant to California Government Code §12965 in an amount to be proved.

4       10. In engaging in the conduct alleged herein the Defendant acted with malice  
5 fraud and oppression as those terms are defined in California Civil Code §3294. Pursuant to  
6 California Civil Code §3294 Plaintiff claims punitive and exemplary damages against the  
7 Defendant in an amount to be proved and which is within in the jurisdiction of this court.

8

9

## SECOND CLAIM

10     (Violation of statutory duties under the California Labor Code)

11     11. Plaintiff incorporates paragraphs 1 and 2 of this complaint by this reference.

12     12. This court has supplemental jurisdiction over this claim in that it is a related  
13 California state claim which arises out of the same set of circumstances. Venue is proper in this  
14 district because the events which form the basis of the claim occurred in San Diego County, CA.

15     13. In August 2007 Plaintiff was a permanent employee of Defendant SODEXO, INC.  
16 When Defendant SODEXO, INC. terminated Plaintiff's employment in August 2007,  
17 Plaintiff had accrued and was owed \$952 in vacation pay benefits. The Defendant did not pay  
18 Plaintiff these vacation benefits when she was terminated. The Defendant did not pay  
19 Plaintiff for over thirty days after they were demanded. This conduct of the Defendant was all in  
20 violation of California Labor Code §§201, 202 and 203.

21     14. The conduct of the Defendant alleged herein legally caused Plaintiff to lose  
22 \$952 plus interest on that amount until it is paid. In addition to this amount Plaintiff  
23 claims waiting time penalties of thirty days of her normal salary pursuant to California  
24 Labor Code §203 in the amount of \$3,360.

25     15. In pursuing her claim for vacation pay Plaintiff has incurred, and will  
26 continue to incur reasonable attorney's fees and expenses in an amount to be proved and which  
27 she claims pursuant to California Labor Code §218.5.

28 WHEREFORE, Plaintiff prays as follows against the Defendant:

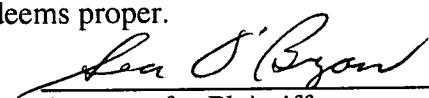
1 As to the First Claim:

- 2       1. Compensatory damages in excess of \$75,001 in an amount to be proved.  
3       2. For attorney's fees and expenses according to proof;  
4       3. For punitive and exemplary damages according to proof;  
5       4. For costs of suit; and  
6       5. For such other and further relief as the court deems proper.

7 As to the Second Claim:

- 8       1. Compensatory damages according to proof;  
9       2. For statutory penalties in the amount \$3,360;  
10      3. For attorney's fees and expenses according to proof;  
11      4. For costs of suit; and  
12      5. For such other and further relief as the court deems proper.

13 Dated: 7/8/08

  
\_\_\_\_\_  
Attorney for Plaintiff

15 **JURY TRIAL DEMAND**

16 Plaintiff demands a jury trial in this matter on all claims.

17 Dated: 7/8/08

  
\_\_\_\_\_  
Attorney for Plaintiff

## CIVIL COVER SHEET

FILED

This CJS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

SYLVIA ORTIZ

(b) County of Residence of First Listed Plaintiff San Diego, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

SODEXO, 2000 JUL - 8 Delaware Corporation

County of Residence of First Listed Defendant Delaware

SOUTHERN (U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

BY DEPUTY

Attorneys (If Known)

'08 CV 1215 IEG JMA

(c) Attorney's (Firm Name, Address, and Telephone Number)

Sean T. O'Bryan, 402 West Broadway,  
Suite 400, San Diego, CA 92101 (619)  
595-4807

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)                        |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>REAL PROPERTY</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRIISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt.-Relations <input type="checkbox"/> 730 Labor/Mgmt.Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions

## V. ORIGIN

(Place an "X" in One Box Only)

- |   |   |  |  |  |   |  |
|---|---|--|--|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Recopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|--|--|---|--|

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
**28 U.S.C. section 1332**

Brief description of cause:

**Wrongful termination of employment/discrimination**

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

## DEMAND OVER

75,001

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/8/08

SIGNATURE OF ATTORNEY OF RECORD

/Sean T. O'Bryan

FOR OFFICE USE ONLY

RECEIPT # 152107AMOUNT \$350

APPLYING IFP

JUDGE

MAG. JUDGE

TAC 7/8/08

**UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

**# 152707 - TC  
\* \* C O P Y \* \*  
July 08, 2008  
10:26:06**

**Civ Fil Non-Pris**  
USAO #: 08CV1215  
Judge.: IRMA E GONZALEZ  
Amount.: \$350.00 CK  
Check#: BC5521

**Total-> \$350.00**

**FROM: SYLVIA ORTIZ  
VS.  
SODEXO, INC**